

CHAPTER 16 [OLD]
PRESIDENTIAL ELECTORS

REPEALED. L 1970, c 26, §3.

CHAPTER 16 [NEW]
VOTING SYSTEMS

Part I. General Provisions

Section

16-1 Voting systems authorized

16-2 Voting system requirements

16-3 Election services, provisions, and charges

Part II. Voting Machine System

16-11 Definitions

16-12 Voting machines; requirements

Part III. Paper Ballot Voting System

16-21 Definition

16-22 Marking

16-23 Paper ballot; voting

16-24 Count, public

16-25 Order and method of counting

16-26 Questionable ballots

16-27 Number of blank and questionable ballots; record of

16-28 Declaration of results

16-29 Tally sheets

Part IV. Electronic Voting System

16-41 Definitions

16-42 Electronic voting requirements

16-43 Ballot handling

16-44 Counting center employees

16-45 Official observers

16-46 Counting defective ballots

16-47 Preparation of absentee ballots

PART I. GENERAL PROVISIONS

§16-1 Voting systems authorized. The chief election officer may adopt, experiment with, or abandon any voting system authorized under this chapter or to be authorized by the legislature. These systems shall include, but not be limited to voting machines, paper ballots, and electronic voting systems. All voting systems approved by the chief election officer under this chapter are authorized for use in all elections for voting, registering, and counting votes cast at the election.

Voting systems of different kinds may, at the discretion of the chief election officer, be adopted for different precincts within the same district. The chief election officer may provide for the experimental use at any election, in one or more precincts, of a voting system without a formal adoption thereof and its use at the election shall be as valid for all purposes as if it had been permanently adopted; provided that if a voting machine is used experimentally under this paragraph it need not meet the requirements of section 16-12. [L 1970, c 26, pt of §2]

§16-2 Voting system requirements. All voting systems adopted under this chapter by the chief election officer or the legislature shall satisfy the following requirements:

- (1) It shall secure to the voter secrecy in the act of voting;
- (2) It shall provide for voting for all candidates of as many political parties as may make nominations, nonpartisans, and for or against as many questions as are submitted;
- (3) It shall correctly register or record and accurately count all votes cast for any and all persons, and for or against any and all questions. [L 1970, c 26, pt of §2]

[§16-3] Election services, provisions, and charges. The chief election officer may make voting systems and election services available to state agencies and private entities pursuant to rules adopted in accordance with chapter 91. Reasonable fees may be charged for the provision of such systems or services. [L 1993, c 304, §3]

PART II. VOTING MACHINE SYSTEM

Note

Part heading amended by L 1975, c 36, §5(1).

§16-11 Definitions. "Protective counter" means an apparatus built into the voting machine which cannot be reset, which records the total movement of the operating lever.

"Voting machine system" means the method of electrically, mechanically, or electronically recording and counting votes upon being cast. [L 1970, c 26, pt of §2; am L 1975, c 36, §5(2)]

Revision Note

Definitions rearranged.

§16-12 Voting machines; requirements. No voting machine shall be installed for use in any election in the State unless it shall satisfy the following requirements:

- (1) It shall permit the voter to vote for as many persons for an office as the voter is lawfully entitled to vote for, but no more;
- (2) It shall prevent the voter from voting for the same persons more than once for the same office;
- (3) It shall permit the voter to vote for or against any question the voter may have the right to vote on, but no other;
- (4) In special primary and primary elections it shall be so equipped that it will lock out all rows except those of the party or nonpartisan candidates selected by the voter;
- (5) It shall be provided with a protective counter or protective device whereby any operation of the machine before or after the election will be detected;
- (6) It shall be provided with a counter which shall show at all times during an election how many persons have voted;
- (7) It shall be provided with a mechanical model, illustrating the manner of voting on the machine, suitable for the instruction of voters. [L 1970, c 26, pt of §2; am L 1973, c 217, §6(a); am L 1980, c 264, §5(a); gen ch 1985]

PART III. PAPER BALLOT VOTING SYSTEM

Note

Part heading amended by L 1975, c 36, §5(3).

§16-21 Definition. "Paper ballot voting system" means the method of recording votes which are counted manually. [L 1970, c 26, pt of §2; am L 1975, c 36, §5(4)]

§16-22 Marking. The method of marking a paper ballot shall be prescribed by the chief election officer by rules and regulations promulgated in accordance with chapter 91. The chief election officer shall prescribe a uniform method of marking the ballots in all

precincts in a county and for absentee voting by paper ballot. [L 1970, c 26, pt of §2; gen ch 1985]

Law Journals and Reviews

The Protection of Individual Rights Under Hawai'i's Constitution. 14 UH L. Rev. 311.

Case Notes

Casting of write-in votes not permitted. 70 H. 498, 776 P.2d 824.

§16-23 Paper ballot; voting. Upon receiving the ballot the voter shall proceed into one of the voting booths provided for the purpose, and shall mark the voter's ballot in the manner prescribed by section 16-22.

The voter shall then leave the booth and deliver the ballot to the precinct official in charge of the ballot boxes. The precinct official shall be sufficiently satisfied that there is but one ballot enclosed, whereupon the ballot shall be immediately dropped into the proper box by the precinct official. [L 1970, c 26, pt of §2; am L 1973, c 217, §6(b); am L 1977, c 189, §4; gen ch 1985]

§16-24 Count, public. Insofar as the limits of the room in which the voting takes place reasonably allow, no person shall be prevented from attending the counting of the ballots on election day, unless it is necessary to preserve the peace. [L 1970, c 26, pt of §2]

§16-25 Order and method of counting. Each ballot shall be counted and finished as to all the candidates thereon before counting a second and subsequent ballots. Except as provided in section 11-71, the ballots shall be counted by teams in the following manner only: by one precinct official announcing the vote in a loud clear voice, one precinct official tallying the vote, one precinct official watching the precinct official announcing the vote and one precinct official watching the precinct official tallying the vote. The precinct official doing the announcing or tallying and the precinct official watching that official shall not be of the same political party. [L 1970, c 26, pt of §2; am L 1973, c 217, §6(c); gen ch 1993]

§16-26 Questionable ballots. A ballot shall be questionable if:

(1) A ballot contains any mark or symbol whereby it can be identified, or any mark or symbol contrary to the provisions of law; or

(2) Two or more ballots are found in the ballot box so folded together as to make it clearly evident that more than one ballot was put in by one person, the ballots shall be set aside as provided below.

Each ballot which is held to be questionable shall be endorsed on the back by the chairperson of precinct officials with the chairperson's name or initials, and the word "questionable". All questionable ballots shall be set aside uncounted and disposed of as provided for ballots in section 11-154. [L 1970, c 26, pt of §2; am L 1973, c 217, §6(d); gen ch 1985, 1993]

§16-27 Number of blank and questionable ballots; record of. In addition to the count of the valid ballots, the precinct officials shall, as to each separate official ballot, also determine and record the number of totally blank ballots and the number of questionable ballots. [L 1970, c 26, pt of §2; am L 1973, c 217, §6(e)]

§16-28 Declaration of results. When the precinct officials have ascertained the number of votes given for each candidate they shall make public declaration of the whole number of votes cast, the names of the persons voted for, and the number of votes for each person. [L 1970, c 26, pt of §2; am L 1973, c 217, §6(f)]

§16-29 Tally sheets. The tally sheets used in counting the ballots cast shall be marked and handled in a secure fashion prescribed in rules and regulations promulgated by the chief election officer in accordance with chapter 91. [L 1970, c 26, pt of §2]

PART IV. ELECTRONIC VOTING SYSTEM

Note

Part heading amended by L 1975, c 36, §5(5).

§16-41 Definitions. "Counting center" means the computer facilities and surrounding premises designated by the chief election officer or the clerk in county elections where electronic voting system ballots are counted.

"Defective ballot" means any ballot delivered to the counting center in accordance with section 11-152 that cannot be read by the ballot reading device.

"Electronic voting system" means the method of recording votes which are counted by automatic tabulating equipment.

"Voter verifiable paper audit trail" means the paper record that constitutes a complete record of ballot selections that is verified by the voter. The record may also be used to assess the accuracy of the voting machine's electronic record and to verify the election results. [L 1970, c 26, pt of §2; am L 1975, c 36, §5(6); am L 2006, c 5, §1]

Revision Note

Definitions rearranged.

§16-42 Electronic voting requirements. (a) When used at primary or special primary elections, the automatic tabulating equipment of the electronic voting system shall count only votes for the candidates of one party, or nonpartisans. In all elections, the equipment shall reject all votes for an office when the number of votes therefor exceeds the number that the voter is entitled to cast.

No electronic voting system shall be used in any election unless it generates a paper ballot or voter verifiable paper audit trail that may be inspected and corrected by the voter before the vote is cast, and unless every paper ballot or voter verifiable paper audit trail is retained as the definitive record of the vote cast.

(b) The chief election officer may rely on electronic tallies created directly by electronic voting systems, in lieu of counting the paper ballots by hand or with a mechanical tabulation system if:

(1) The electronic voting system is subject to inspection, audit, and experimental testing, by qualified observers, before and after the election, pursuant to administrative rules adopted by the chief election officer under chapter 91;

(2) No upgrades, patches, fixes, or alterations shall be applied to the system through thirty days after the election;

(3) The chief election officer conducts a post-election, pre-certification audit of a random sample of not less than ten per cent of the precincts employing the electronic voting system, to verify that the electronic tallies generated by the system in those precincts equal hand tallies of the paper ballots generated by the system in those precincts; and

(4) If discrepancies appear in the pre-certification audits in paragraph (3), the chief election officer, pursuant to administrative rules, shall immediately conduct an expanded audit to determine the extent of misreporting in the system. [L 1970, c 26, pt of §2; am L 1973, c 217, §6(g); am L 1979, c 139, §12; am L 2005, c 200, §1; am L 2006, c 5, §2]

§16-43 Ballot handling. In every case where the ballots are handled by election officials or election employees, from the time the ballots are delivered to the several precincts to the time they are returned to the chief election officer or clerk in county elections for disposition upon completion of the tabulation, they shall be handled in the presence of not less than two officials assigned in accordance with sections 11-71 and 11-72 or section 16-45. [L 1970, c 26, pt of §2; am L 1975, c 36, §5(7)]

§16-44 Counting center employees. (a) The chief election officer or clerk in county elections shall designate counting center employees who will be responsible for the tabulation of the ballots.

(b) Counting center employees shall follow the procedures established by the chief election officer for the tabulation of the ballots. [L 1970, c 26, pt of §2; am L 1975, c 36, §5(8)]

§16-45 Official observers. Official observers shall be designated by the chief election officer or the clerk in county elections to be present at the counting centers and selected in the following manner:

(1) No less than one official observer designated by each political party;

(2) No less than one official observer from the news media;

(3) Additional official observers as space and facilities permit designated by the chief election officer in state elections and the clerk in county elections.

The chief election officer or clerk shall give all official observers reasonable notice of the time and place where the ballots shall be counted. No person shall be permitted in the counting center without the written authorization of the chief election officer or clerk. [L 1975, c 36, §5(9)]

§16-46 Counting defective ballots. Counting center employees in the presence of at least two official observers shall prepare a new ballot to replace each defective ballot.

The defective ballots shall be segregated and the replacement ballots counted pursuant to rules promulgated by the chief election officer. [L 1975, c 36, §5(9)]

[§16-47] Preparation of absentee ballots. Counting center employees in the presence of at least two official observers shall prepare absentee ballots for counting by automatic tabulating equipment in a manner that shall accurately reflect the votes cast by the absentee voters. [L 1980, c 264, §5(b)]